

prosecution would come under official cognizance: but that is obviously a different matter, and has nothing to do with the prosecution itself<sup>9</sup>.

## SECTION V.—THE LEGAL POWERS OF FOREST OFFICERS.

### § 1.—*Power of Arrest.*

By the Indian Forest Act (section 63) any Forest Officer (or Police officer) may without orders from a Magistrate, and without a warrant, "arrest any person against whom a reasonable suspicion exists of his having been concerned '*i.e.*, as a principal or abettor) in any forest offence, provided that the offence was punishable with at least one month's imprisonment. This power does not extend to offences against rules made for the management of "Protected" areas except in the case of offences against a prohibition notified under section 29.

There must be no "unnecessary" delay in sending the person arrested before a Magistrate having jurisdiction.

The Burma Act. (section 63) has somewhat restricted this power. Here the arrest can only take place if the offender refuses to give his name and residence, or gives one that is false, or if there is reason to believe that he will abscond.

### § 2.—*Power to seize Property.*

Forest officers are (under both Indian and Burma Acts) entitled to seize all forest produce in respect of which there is reason to believe a forest offence has been committed, as well as all cattle, tools, boats, carts, &c., used in committing it. (Section 52.) This subject has been dealt with in the chapter on Forest Protection, so that further notice is not here needed.

<sup>9</sup> The Continental law usually contains provisions requiring sanction before prosecuting a forest officer. In France, for example, forest officers can only be prosecuted for acts done in their public character (*faits relatifs à leurs fonctions*) with previous sanction. (*Curasson*, I., page 123.) This sanction is prescribed in detail by the *Ordonnance Réglem.* Art. 39. A *Garde Général* requires the Director-General's sanction, for an Inspector the sanction of the Minister of Finance, and for a *Conserveur* that of the *Conseil d'État*.

A mark has to be put on the property seized, and a report made at once to the Magistrate having jurisdiction: where property is seized and no offender is found, then a report to the seizing officer's superior is alone necessary<sup>10</sup>.

§ 3.—*Power to interpose and prevent Offences.*

Forest officers (and Police officers) are bound to prevent, and may interpose for the purpose of preventing, forest offences<sup>1</sup>. This would naturally include the right of warning people, and of taking cognizance of persons wandering about in the forest armed with axes, saws, &c., although this latter is not (as in the French law) in itself an offence.

Forest officers, properly empowered, are also entitled to guard against fire, by notifying certain seasons *during which only* the carrying of fire in reserved forests is permitted. (See section on Forest Fires).

§ 4.—*Power to demand Aid from certain Persons.*

This is the place to mention that in certain cases forest officers are empowered to demand aid in the execution of their functions.

At a timber station or dépôt, all servants, whether Government or private, employed at such stations, may be called upon to aid in case there is danger to the property stored there, in any emergency (such as cases of flood or fire). (Indian Forest Act, section 44—Burma, section 45.)

Forest officers may also demand aid in extinguishing forest fires, in preventing offences, and in discovering and arresting

<sup>10</sup> The French law also recognizes a similar "*saisie*," and there is also the "*séquestre*" (Puton, 135). The *saisie* simply leaves the property where it is but makes it inalienable—no attempt to do anything with it has any legal effect—it is "*frappé d'indisponibilité*." Cattle can be seized, and stolen wood (C. F., 161, also C. F., 81, 84, 146, 152). *Séquestre* is when the property needs to be moved and taken care of and deposited with someone (Puton, 140); the cases in which this process is adopted are expressly defined by the law; and it is not made use of in other cases.

<sup>1</sup> Indian Act, section 64 (Burma Act, *id.*). The French Code (Art. 163) gives power to arrest persons only when caught in the act of committing a forest offence. This applies to guards, &c. (*préposés* not *agents*, see Puton, page 114; see also page 145).

offenders, under section 78 of the Act—Burma, section 76. In this case the persons liable to give such aid are—

- (a) Rightholders ;
- (b) Persons holding permission to take produce or to graze cattle ;
- (c) the servants and employés of (a) and (b) ;
- (d) every person employed by Government or remunerated by Government for services in any village contiguous to the forest ;

and these persons are also bound to give information of offences that may come to their knowledge. (See page 322.)

### § 5.—*Aid by the Police.*

Nothing is said in the Forest Act of forest officers having a right to demand the aid of the public force (Police) in searching for stolen property, or in preventing offences, or arresting offenders, or in cases of fire. But as in such cases the Police are empowered to act, it is presumed that they would be bound to give aid to forest officers acting in the same way<sup>2</sup>. And of course a forest officer can call on any other forest officer to help him.

Under the Criminal Procedure Code, if it was a case of offence of the graver kind (*e.g.*, theft) cognizable by the Police, the Police would be bound to take up the case on the information of a forest officer. Under the Forest Act also all offences (except those

<sup>2</sup> See also section 150 of the Criminal Procedure Code: this shows that the Police would be bound to give information to the forest officer. The French Code (Art. 164) provides: "The officers and guards of the Forest administration have the right to require directly the aid of the public force in the repression of forest offences (both *délits*—graver offences, and '*contraventions*' or minor ones) as well as in search for and seizure of wood illegally cut or fraudulently sold or bought." Forest officers of all ranks form part of the military force of the country (Puton, page 153). Forest officers can therefore demand the aid of other forest officers. In a few Indian Acts (*e.g.*, Customs Act, VIII of 1875, section 25); officers are expressly empowered to demand police aid. I take this opportunity of stating that the Forest force is in its turn bound to aid the Police or Magistracy in the cases mentioned in sections 42-5, Criminal Procedure Code; these sections the student should read.

minor ones above alluded to—section 61, Forest Act) are “cognizable” by the Police; hence, according to section 156 of the Criminal Procedure Code, the Police officer has power to investigate such a case and is bound to do so (section 157), if it occurred within his jurisdiction, unless the proviso to the section applies.

### § 6.—*Power to use Weapons or to use Force.*

I may also give a passing notice to a question which may arise, *viz.*, whether a forest officer is justified in using his weapons in resisting offences, &c.

No special rule is laid down on this subject, but the usual law of the right of private defence of course applies to forest officers as to any others. This right is stated in sections 97-106 of the Indian Penal Code, and, as I have elsewhere stated, it extends to defending one's self or the person of any one else against any offence affecting the human body, or one's own property, or the property of Government, or of any one else, whether movable or immovable, against theft, robbery, mischief, or criminal trespass, or attempts to commit these offences. The right extends even to killing the person attacking, in those very grave assaults against the person, which reasonably cause immediate apprehension of death or *grievous* hurt (section 100, Indian Penal Code), but not otherwise; and in cases against property (section 103, Indian Penal Code) only in grave cases of robbery, house-breaking by night, or mischief by fire to a human dwelling or place used for the custody of property, but not otherwise. In *all* other cases it only extends to causing harm, short of death, to the wrongdoer.

In *no* case does it extend to doing *more harm than is necessary* to effect the object of defence.

In *no* case also does it arise if there is time to apply to the public authorities for help.

This is only the barest outline of the subject, and for details, and especially to see when the right begins to exist, and when it ceases, the Code itself must be looked to.

I may here notice that if a *public servant* causes death, though exceeding his real powers, but acting in good faith and doing what he believed to be lawful and necessary for the discharge of his duty, and bearing no illwill to the person killed, he cannot be charged with murder, but only with culpable homicide. (Section 300, Indian Penal Code, *Expl.* 3<sup>3</sup>.)

The Criminal Procedure Code says (section 46) that a *Police officer, or other person* authorized to make an arrest, may use all means necessary to effect the arrest if that arrest is forcibly resisted; but this does not extend to causing death, unless the offence for which the arrest is made is one punishable with death or transportation for life.

This could not of course deprive the officer of the right to kill the person resisting if *the resistance was so violent that it caused to the officer reasonable apprehension that he himself would be killed*, or subjected to grievous hurt; because, in that case, the right of defence above alluded to would come into play<sup>4</sup>.

### § 7.—Power of Search and Arrest.

The powers incidental to an arrest, such as the power of entering a house, breaking a door and so forth, have been already described. And the "search warrant" has also been alluded to. Forest officers may be invested with powers themselves to issue search warrants (Indian Act, section 71—Burma 70).

This power as before remarked would be only necessary where there is a very large timber trade, and the locality is such that timber

<sup>3</sup> In which case he could, according to the circumstances, receive a modified sentence; for though, by section 304, it *might* be transportation for life, it *might*, if the circumstances were so, be only a short term of imprisonment; there is no *minimum*.

<sup>4</sup> By the Prussian law (*Eding*, page 182), forest officers (who must be in uniform, or with distinctive marks of office, in order to be justified in so doing) may use their weapons against forest offenders—

- (1) When an attack (*angriff*) on the officer's person is made or threatened,
- (2) When resistance is actually offered, or threatened so as to cause apprehension of danger (*gefährliche drohung*).

This use of weapons may only be made as far as necessary for defence. So the Austrian law (*Forstgesetz* of 1852, Art. 53).

pirates have opportunities for concealing and making away with timber.

### § 8.—*Power to conduct Prosecutions.*

It will naturally be asked what powers forest officers of any grade have to conduct prosecutions, or to appear as complainants in a Criminal Court, on behalf of the State, to procure a summons against an offender, and conduct the case. It is to be regretted that nothing definite is laid down about this. Most certainly forest officers ought to have a definite standing before the Magistrates' Courts in this respect <sup>6</sup>.

At present everything is matter of inference, or at best of the permission of the Magistrate. A forest officer can certainly take cognizance of an offence and arrest an offender and take him before a Magistrate. Of course, therefore, he may appear on the trial (if one follows) as complainant; but to be complainant is not the same thing as being allowed to conduct the case, to examine or cross-examine witnesses, and address argument to the Court. By the Police Act, section 24, it is expressly provided that any Police officer may lay information, act, investigate and prosecute any case before a Magistrate. By the Criminal Procedure Code, section 495,

<sup>6</sup> As in the French Law, Art. 159 (an addition made to the original Code in 1859), where it is expressly provided that "agents,"—that is "administrative" or controlling and executive officers of the rank of *Garde Général* and upwards but not *préposés*, i.e., guards of cantons or bents, brigades, &c.,) can conduct suits and prosecutions on behalf of the Administration, both in cases of *délit and contravention* (major and minor offences) and in all cases for compensation. And here I may again refer to the distinction made by the Forest law between the *agent* and the *préposé* in the matter of criminal prosecutions: the officers who can arrest, make a seizure, or execute a search (*visite domiciliaire*) and make formal "*constatation*" of what has come under their notice (and *préposés* can do all this) are not the officers who conduct the prosecution (*poursuite*). The "agents" can never make an arrest nor apparently a search (*Pulton*, page 114), nor can the *préposé* ever conduct a case, (id. and *Code d'Ins. Crim. Art.*, 182). The "agents," it is true, can make an official record (*constatation*) of what they see, but that is only a secondary function, because it would be inconvenient if they could not; otherwise they are kept free and impartial to prosecute, &c. They are entitled to be heard in argument (*Code, For.* 174) and to appeal (*Code, For.* 183-4). It is also conveniently provided that forest guards, though "they may not prosecute, may serve and execute Court processes (*Code, For.* 173) except warrants of execution by seizure of property.

the Magistrate may in any trial before him (or preliminary enquiry) *permit* any person to conduct the prosecution. So the forest officer might get *leave* to prosecute. Government might also appoint forest officers "public prosecutors" for their own class of cases, under section 492. In any grave case the Government would appoint a public prosecutor or send a Government Advocate; but this does not remove the daily inconvenience of wanting a recognized *locus standi* for forest officers in the Magistrates' Courts, and the want of some section in the forest law just like the section 24 of the Police Act, or, better still, like the French Code.

As to the powers of forest officers to act in civil suits, I shall conveniently defer my remarks to the section on Government suits in the Chapter on Civil Procedure law<sup>6</sup>.

#### § 9.—*Power to compound Offences.*

I now turn to other powers specially given to forest officers.

Officers specially empowered by the Local Government under section 67 of the Forest Act (Burma Act, section 66), have the right to 'compound' all forest offences (except those grave ones specified in section 62 of the Act). The composition consists in accepting a sum of money as compensation for damage done: if this is paid, the person is set free, and any property or cattle seized is let go<sup>7</sup>.

No person, it will be understood, is in any way bound to pay the sum required. If he thinks the sum too high, or that he has committed no offence, or can show a valid excuse, he may refuse to pay and submit to be tried for the alleged offence before a Magistrate<sup>8</sup>.

<sup>6</sup> In France, as I said, the Forest Service has nothing to do with purely civil suits, except of course to give advice which is often indispensable. (Puton, p. 93.)

<sup>7</sup> I have discussed this matter at pages 378-9.

<sup>8</sup> This is so also in France (Code Forest: Art. 159); it is spoken of as "transaction" (transiger is the verb). The Forest "Agent" (not *préposé*) can compound any Forest offence or claim for reparation, at any time before judgment; and even after judgment, but only in respect of money penalties or compensation. This is clearly explained in Puton, pp. 150-1.

§ 10.—*The Powers under Forest Act, Section 71.*

Lastly, forest officers may be invested with certain special powers under section 71, Indian Forest Act. (Burma Act, section 70.)

Those under (a) and (b) relate to the survey of land, and enquiries into rights, and may be required when a forest officer is sent on survey duty, preliminary to a settlement or otherwise, or perhaps when he is working with a Forest Settlement Officer without himself being actually appointed Joint Settlement Officer (in which case he could be vested with the powers of the office). (Indian Act, Section 8, and Burma, section 10.)

The power under (c) relates to the detection of offences, and to this I have already alluded.

§ 11.—*Power to record Evidence on the spot.*

Under section 71 (d) Burma 70 (d) power may be given, which is analogous to, but not at all the same as, that exercised by forest officers under the French Code.

The forest officer empowered may hold a preliminary enquiry into a forest offence just as the Police do, only with this important difference that he may *record evidence*; and this, *provided it has been taken in the presence of the accused*, is admissible in a subsequent trial before a Magistrate, but may, of course, be disproved or contradicted.

How officers should record evidence in such cases may be learned from the section on record of evidence under the Criminal Procedure Law.

The use of this power<sup>9</sup> is very limited: it is not intended to be used as a matter of course in every forest case, but only where

<sup>9</sup> The student will find a very clear and precise account of the forest officer's *procès verbal* under the French Law, in M. Puton's Manual (pages 120-130). The *procès* must be (1) *written* (in the absence of express legal excuse) by the officer himself, must be (2) *signed* (not merely marked) by him, (3) *dated*, (4) "affirmed," that is stated on oath before a proper authority to be entirely true; which oath is recorded and duly signed; and it must (5) be registered (see Code For., 165-170). The registration is a mere fiscal act and of no real importance except



the forest officer comes across some case in which the witnesses are at hand, and the accused is either arrested on the spot or can at once be brought there; also where the facts are such that the evidence of them is likely to disappear by lapse of time and influence of weather, &c., unless they be proved, and the record of them

as regards certain fees which may be leviable for delay. The *procès verbal* must also (Code. Inst. Crim., Art. 16) state the nature of the offence, the circumstances, the time and the place of occurrence, the proofs of it, and the local or other indications of its occurrence (e.g., a freshly cut stump of such and such a girth; ground disturbed, &c., &c.)

The *procès verbal* so drawn up may be of two kinds. (1) If it is prepared by two officers concurrently, no matter what the gravity of offence or amount of fine, &c., it is positive proof (of all *material facts* directly asserted) and cannot be contradicted, except (1) by plea of formal defect in legal requirements, and (2) by a process called "*inscription de faux*," that is by a formal plea to the Court that the *procès verbal* contains statements which are false and contrary to the facts. This issue is then solemnly tried as an incidental or side-trial by itself; if the objector succeeds, the *procès verbal* goes for nothing and cannot be amended, or supported in any way. If the objector fails, he is liable to be fined at least 300 francs and may be prosecuted for calumny, &c. The reader may think this a tremendous power to put in the hands of the officers; but it should be borne in mind, that the severity of the rule is very largely tempered by the fact that the slightest disobedience to the precise rules of minute formality, is fatal; and not only so, but the proof only, extends to *material facts* directly asserted, that is to say (as M. Puton explains, *Manual*, p. 125) "those facts which fall directly within the cognizance of the senses of the deponents, and which are not matter of inference or of supposition or estimate on their part."

The result, naturally is, that the *procès verbal* to be successful must be prepared with the utmost intelligence, and the most scrupulous care and accuracy; while, for any thing like false or careless statement in it, the penalty is very severe, and few officers would dare to run the risk.

(2) If the *procès verbal* has been prepared only by one guard or agent, then it only carries the previously described degree of authenticity in minor cases (below a certain amount of penalty), and in cases above that grade, it affords *prima facie* proof only, which may be contradicted.

If a *procès verbal* is annulled for defects of form, the guard, &c., may be called as a witness, but not if the *procès* is set aside on the "*inscription de faux*."

By the Prussian law, which is simpler (Eding. 180), "public faith" is given to a formal record of fact (like the *procès verbal*), as well as to the valuation of damage done, as made by the recording officer; but the record is only *prima facie* proof till the contrary is proved. Eding justifies the force thus reasonably attached to the official act, by observing that for the management and protection of State forests a carefully selected service is organized, and the employés are schooled to

secured, at once. It would not of course be applied where no offender was found, or where none could properly be arrested at or near the spot, nor would it be where the witnesses were not on the spot or close by and could be questioned at once: in such cases a police investigation must be sought, or a complaint made to a Magistrate. At best, the power in the Act is merely a half measure, a tentative introduction of a new power, which will no doubt, on revision, be placed on a proper basis.

### § 12.—*Powers as receivers of Government Revenue.*

Forest officers have also certain powers in connection with collection and receipt of revenues, and expenditure of Government money.

There are departmental rules about the power to expend money provided in the divisional budget, and also rules about keeping accounts, dealing with revenue received, supplying subordinates with funds by imprest advances, and so forth, which are laid down in the Departmental Code, and with which this manual has no concern.

Forest officers may also receive revenue from sales of forest produce and so forth, but they have no functions to execute for its actual recovery<sup>10</sup>. Generally payments are made before delivery, but where this is not so, or where otherwise there are outstandings to be recovered, all the forest officer has to do is to report (in a form prescribed by order) to the Collector who can recover as an arrear of land revenue (Ind., Act, section 81—Burma, 77)—

- (a) All money payable to Government under the Act or rules<sup>1</sup>;
- (b) All money payable on account of any forest produce,
- (c) All money as expenses incurred in the execution of the Act in respect of such produce.

their duty during a long course of almost military discipline and experience. Consequently the formal deposition of an enrolled and sworn forest officer, regarding facts which come under his official cognizance, ought justly to be allowed a special degree of weight before the public tribunals.

<sup>10</sup> And so in France (Puton, page 94). The 'agents' send "*titres de recouvrement*," lists of revenue due, to the "director of domains," who takes steps to recover. In many cases they can be got in by summary process as in India.

<sup>1</sup> Except *finés*, which are recovered under the Criminal Procedure Law.